

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

PAMELA GARNER, as Executor of
the Estate of Charles Garner and on
behalf of all appropriate claimants
under §537.080 R.S.Mo.,

Plaintiffs,

vs.

FELLOWES MANUFACTURING and
TECH SPRAY MANAGEMENT CO.,
L.L.C.,

Defendants.

Case No. 05-3137-CV-S-ODS

ORDER AND OPINION GRANTING
DEFENDANT TECH SPRAY MANAGEMENT L.L.C.'S MOTION TO DISMISS

Defendant Tech Spray Management L.L.C. ("Tech Spray") filed a Motion to Dismiss on November 1, 2005. Plaintiff did not respond within the time allotted by the Local Rules, and on November 22, 2005, the Court directed Plaintiff to respond by December 9, 2005. To date, Plaintiff has not responded. The Motion to Dismiss (Doc. # 32) is granted.

This is a wrongful death action. The Second Amended Complaint alleges Charles Garner died on or about July 16, 2002. Second Amended Complaint, ¶ 10. Plaintiff did not assert a claim against Tech Spray until the First Amended Complaint was filed on September 9, 2005, following Plaintiff's motion seeking leave to do so filed on September 7, 2005. The statute of limitations for a wrongful death action is three years, and the cause accrues upon the death of the decedent. Mo. Rev. Stat. § 537.100; State ex rel. Brandon v. Dolan, 46 S.W.3d 94 (Mo. Ct. App. 2001). Obviously, September 9, 2005 is more than three years after July 16, 2002.

Accordingly, the Motion to Dismiss is granted and Tech Spray is dismissed from these proceedings.

IT IS SO ORDERED.

DATE: December 15, 2005

/s/ Ortrie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT